

IN THE MATTER OF THE CLAIM	* BEFORE MARY SHOCK,
OF DARRIN SLATER	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No: DLR-HIC-02-12-08183
FOR THE ALLEGED ACTS OR	* MHIC NO: 09 (90) 993
OMISSIONS OF	*
CHRISTOPHER ECKENRODE	*
T/A APEX CONSTRUCTION AND	*
HOME IMPROVEMENT, LLC	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 9, 2009, Darrin Slater (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,975.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Eckenrode, t/a Apex Construction and Home Improvement, LLC (Respondent).

On August 15, 2012, I held a hearing at the Office of Administrative Hearings in Cumberland, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). The

Claimant represented himself. The Respondent represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

- CL #1 Washington County Permits and Inspections Permit, June 1, 2006
- CL #2 Check from Claimant to Respondent, May 31, 2006
- CL #3 Check from Claimant to Respondent, July 27, 2006
- CL #4 Check from Claimant to Kervin Martin, August 14, 2006
- CL #5 Washington County Permits and Inspections Field Correction Notice, August 1, 2006
- CL #6 Washington County Permits and Inspections Field Correction Notice, August 22, 2006
- CL #7 Email from Claimant to Respondent, January 20, 2007
- CL #8 Five photographs of deck's rail posts and Claimant's narrative, undated
- CL #9 Three photographs of deck's handrail brackets and Claimant's narrative, undated
- CL #10 Twenty-five photographs of deck and Claimant's narratives, undated
- CL #11 Washington County Permits and Inspections Inspector's Comments, August 1, 2006, August 22, 2006, September 21, 2006, and April 13, 2007
- CL #12 Washington County Permits and Inspections Inspector's Comments, September 21, 2006 and June 4, 2007
- CL #13 Email from Claimant to Respondent, August 31, 2007
- CL #14 Email from Respondent to Claimant, September 26, 2007
- CL #15 Letter from Arthur W. Boyce, Esquire, to Respondent, January 29, 2008
- CL #16 Duane Kinna Home Improvements Proposal, August 13, 2012

CL #17 Duane Kinna Home Improvements Proposal, May 6, 2009

The Respondent did not offer any exhibits.

I admitted the following exhibits on the Fund's behalf:

FUND #1	Notice of Hearing, June 1, 2012
FUND #2	Hearing Order, February 10, 2012
FUND #3	Respondent's Licensing History, January 27, 2006 to January 27, 2012
FUND #4	Home Improvement Claim Form, May 12, 2009
FUND #5	Letter from Fund to Respondent, June 9, 2009
FUND #6	Email from Respondent's wife to Fund, October 22, 2010
FUND #7	Letter from Fund to Respondent, November 5, 2010

Testimony

The Claimant testified in his own behalf. The Respondent testified on his own behalf.

The Fund did not call any witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor, under license #3344492. (FUND #3.)
2. On May 31, 2006, the Respondent met the Claimant at his home and they agreed that the Kervin Martin, for the Respondent's company, would build a deck on the Respondent's home.
3. The original agreed upon contract price was \$8,000.00, with a \$4,000.00 down payment and a \$4,000.00 payment on completion of the deck.
4. On May 31, 2006, the Claimant paid the Respondent \$4,000.00, by check payable to Apex Construction. (CL #2.)
5. On or about June 1, 2006, the Respondent obtained a building permit for the deck from the Washington County Department of Permits and Inspections (Department of Permits and Inspections). (CL #1.)

6. Kervin Martin began work on the deck in July 2006. The Claimant knew Mr. Martin because he had built a fence for the Claimant.
7. On July 26, 2006, the Claimant paid the Respondent \$2,000.00, by check payable to Apex Construction. (CL #3.)
8. On August 1, 2006, an inspector for the Department of Permits and Inspections inspected the work. The Respondent did not have approved plans for the deck. He had not properly framed the deck; truss hangers were installed incorrectly with nails and they were not flush with the bottom of the joists. (CL #5.) The Respondent was not present for the inspection.
9. On August 14, 2006, the Claimant paid Kervin Martin \$1,000.00 because Mr. Martin stated that he could not complete the work without the additional money. (CL #4.)
10. On August 22, 2006, an inspector for the Department of Permits and Inspections inspected the work. The Respondent still did not have an approved plan for the deck. The joists were not spaced correctly, the joist hangers were single rather than double as required, the Respondent used nails rather than screws, the deck was not attached to the house correctly, and the handrail was not correctly attached to the posts. (CL #6.) The Respondent was not present for the inspection.
11. On October 31, 2006, the Claimant telephoned the Respondent. The deck was not complete and Mr. Martin was no longer in town.
12. On April 13, 2007, the Respondent was present for an inspection of the deck by the Department of Permits and Inspections. The deck did not pass inspection because the deck needed lumber under the joist at the posts, the hangers needed more support, and the step treads needed to be replaced. (CL #11.)
13. In May 2007, the Respondent performed some work on the deck.

14. On June 4, 2007, the lead inspector for the Department of Permits and Inspections inspected the deck. He found numerous violations and stated that the deck needed to be torn down and replaced. (CL #12.)
15. In August and September 2007, the Claimant and Respondent discussed by email a refund of the \$7,000.00 the Claimant had paid. (CL #13 and #14.) The Respondent did not refund the Claimant any money.
16. The cost to remove and replace the deck is \$15,300.00. (CL #16 and #17.)
17. The Claimant's actual loss is \$14,300.00.¹

DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (Supp.2012). *See also* COMAR 09.08.03.03B(2). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

Second, the Respondent admitted that the deck was built in an unworkmanlike, inadequate and incomplete manner. The Respondent contends, however, that he did not enter into a contract with the Claimant for the deck. Instead, he claims that was helping Kervin Martin to cash the Claimant's checks and to pull the permits for the work. The Respondent testified that Mr. Martin did not have a bank account. He stated that although the Claimant made the checks payable to Apex Construction, the Respondent would cash the checks and give the money to Mr.

¹As discussed below, the Claimant is only entitled to reimbursement from the Fund in the amount of \$7,000.00.

Martin. He claims that he does not remember the Claimant handing a check to him. Additionally, because a contractor is required to be licensed to pull a permit and Mr. Martin was not licensed, the Respondent agreed to obtain the permit. Finally, the Respondent stated that that he dealt with the Claimant after Mr. Martin left town in order to help resolve the issues and make the deck right.

The Claimant testified that except for one check, he paid the Respondent personally for the work. For example, on May 31, 2006, the Respondent came to the house with an invoice and the Claimant gave him a check for \$4,000.00. (CL #2.) I believed the Claimant's testimony on this point over the Respondent's testimony that he does not remember the Claimant handing a check to him. The Claimant specifically recalled giving the Respondent the checks while the Respondent could only testify that he does not remember those events; not that they did not occur.

The evidence demonstrates that the Respondent was the contractor for the home improvement and assumed responsibility for the work when he pulled the permits and accepted the Claimant's checks. Even if I were to find as a fact that the Respondent wanted to help Mr. Martin, the Respondent still assumed responsibility for the work and entered into a contact with the Claimant by accepting payment for the work.

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula is appropriate in this case: "If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the

contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price[.]”

COMAR 09.08.03.03B(3)(c).

The Claimant actual loss is calculated as follows:

Paid to contractor	\$ 7,000.00
Cost for repair/replacement	+ <u>15,300.00</u>
Total	\$ <u>22,300.00</u>
Less original contract price	- <u>8,000.00</u>
Actual loss	\$ 14,300.00

The Claimant is entitled to only a portion of his actual loss from the Fund, however. In accordance with Md. Code Ann., Bus. Reg. § 8-405 (a) and (d) (Supp. 2012), the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. The Claimant paid \$7,000.00 to the Respondent, which is less than his actual loss as computed above. Hence, the Claimant is entitled to reimbursement in the amount of \$7,000.00 from the Fund.²

CONCLUSION OF LAW

I conclude that the Claimant has sustained a compensable loss of \$7,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 and § 8-405 (a) and (d).

²The governing statute provides that the “Commission may not award ... more than \$20,000.00 to one claimant for acts or omissions of one contractor[.]” The Commission’s regulations provide that it may not award more than \$15,000.00 in such circumstances. *Compare* Md. Ann. Code, Bus. Reg. § 8-405(e)(1) and COMAR 09.08.03.03D(2)(a). The difference between these two enactments [I would use “rules” instead of ‘enactments’] constitutes a conflict, as a result of which I am bound to follow the statute. *Thanner Enterprises v. Baltimore Co.*, 414 Md. 265, 276 (2010).

RECOMMENDED ORDER

I **PROPOSE** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,000.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

October 23, 2012
Date Decision Mailed


Mary Shock
Administrative Law Judge

MKS/kkc
#137904

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DARRIN SLATER</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF</p> <p>CHRISTOPHER ECKENRODE</p> <p>T/A APEX CONSTRUCTION AND</p> <p>HOME IMPROVEMENT LLC</p> <p>RESPONDENT</p>	<p>* BEFORE MARY SHOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No: DLR-HIC-02-12-08183</p> <p>* MHIC N0: 09 (90) 993</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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